

10-8974 PERRY V. NEW HAMPSHIRE

DECISION BELOW: NHSC 2009-0590App1

LOWER COURT CASE NUMBER: 2009-0590

QUESTION PRESENTED:

When a witness in a criminal case identifies a suspect out-of-court, under suggestive circumstances which give rise to a substantial likelihood of later misidentification, due process requires the trial judge to determine whether the out-of-court identification and any subsequent in-court identification are reliable before either may be admitted into evidence. **Question:** Do the due process protections against unreliable identification evidence apply to all identifications made under suggestive circumstances, as held by the First Circuit Court of Appeal and other federal courts of appeal, or only when the suggestive circumstances were orchestrated by the police, as held by the New Hampshire Supreme Court and other courts?

CERT. GRANTED 5/31/2011